

## §218.21

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities within the designated amounts of use:

(1) The detonation of the underwater explosives indicated in paragraph (c)(1)(i) of this section conducted as part of the training events indicated in paragraph (c)(1)(ii) of this section:

(i) Underwater Explosives:

(A) AGM-114 (Hellfire missile);

(B) Tube-launched Optically tracked Wire-guided (TOW) missile;

(C) Mine Neutralization (20 lb NEW charges); and

(D) 5" Naval Gunfire.

(ii) Training Exercises:

(A) Mine Neutralization (20 lb NEW charges)—up to 100 exercises over the course of 5 years (an average of 20 per year);

(B) Missile Exercise (MISSILEX) (Air-to-Surface; Hellfire missile)—up to 40 exercises over the course of 5 years (an average of 8 per year);

(C) Missile Exercise (MISSILEX) (Air-to-Surface; TOW)—up to 40 exercises over the course of 5 years (an average of 8 per year); and

(D) FIREX with IMPASS—up to 10 exercises over the course of 5 years (an average of 2 per year).

(2) [Reserved]

(d) Regulations are effective [June 8, 2009] and are applicable to the Navy on June 5, 2009 through June 4, 2014.

### §218.21 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§216.106 of this chapter and 218.26, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals within the area described in §218.20(b), provided the activity is in compliance with all terms, conditions, and requirements of this Subpart and the appropriate Letter of Authorization.

(b) The activities identified in §218.20(c) must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

(c) The incidental take of marine mammals under the activities identified in §218.20(c) is limited to the fol-

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lowing species, by the indicated method of take and the indicated number of times:

(1) Level B Harassment:

(i) Bottlenose dolphin (*Tursiops truncatus*)—150 (an average of 30 annually);

(ii) Pantropical spotted dolphin (*Stenella attenuata*)—100 (an average of 20 annually);

(iii) Clymene dolphin (*S. clymene*)—150 (an average of 30 annually);

(iv) Atlantic spotted dolphin (*S. frontalis*)—100 (an average of 20 annually);

(v) Striped dolphin (*S. coeruleoalba*)—100 (an average of 20 annually);

(vi) Spinner dolphin (*S. longirostris*)—15 (an average of 3 annually);

(vii) Risso's dolphin (*Grampus griseus*)—150 (an average of 30 annually);

(viii) Common dolphin (*Delphinus delphis*)—100 (an average of 20 annually);

(ix) Atlantic white-sided dolphin (*Lagenorhynchus acutus*)—100 (an average of 20 annually);

(x) Pilot whales (*Globicephala* sp.)—100 (an average of 20 annually);

(xi) Dwarf or pygmy sperm whales (*Kogia* sp.)—15 (an average of 3 annually);

(xii) Beaked whales—100 (an average of 20 annually);

(xiii) Fraser's dolphin (*Lagenodelphis hosei*)—15 (an average of 3 annually);

(xiv) Melon-headed whale (*Peponocephala electra*)—15 (an average of 3 annually);

(xv) Pygmy killer whale (*Feresa attenuate*)—15 (an average of 3 annually);

(xvi) Killer whale (*Orcinus orca*)—15 (an average of 3 annually);

(xvii) Minke whales (*Balaenoptera acutorostrata*)—15 (an average of 3 annually).

(2) [Reserved]

### §218.22 Prohibitions.

Notwithstanding takings contemplated in §218.21 and authorized by a Letter of Authorization issued under §§216.106 of this chapter and 218.26, no person in connection with the activities described in §218.20 may:

(a) Take any marine mammal not specified in §218.21(c);